

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
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INDIANA BELL TELEPHONE COMPANY, )  
INC. d/b/a SBC INDIANA'S PETITION FOR )  
ARBITRATION OF INTERCONNECTION )  
RATES, TERMS AND CONDITIONS AND )  
RELATED ARRANGEMENTS WITH AT&T )  
COMMUNICATIONS OF INDIANA, GP )  
PURSUANT TO SECTION 252(b) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. 40571-INT04

**FILED**

JAN 11 2005

INDIANA BELL TELEPHONE COMPANY, )  
INC. d/b/a SBC INDIANA'S PETITION FOR )  
ARBITRATION OF INTERCONNECTION )  
RATES, TERMS AND CONDITIONS AND )  
RELATED ARRANGEMENTS WITH TCG )  
INDIANAPOLIS PURSUANT TO SECTION )  
252(b) OF THE TELECOMMUNICATIONS )  
ACT OF 1996 )

INDIANA UTILITY  
REGULATORY COMMISSION  
CAUSE NO. 40559-INT04

You are hereby notified that on this date, the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

On July 8, 2004, the above-captioned Petition for Arbitration between Indiana Bell Telephone Company, Inc. d/b/a/ SBC Indiana (SBC) and AT&T Communications of Indiana and TCG Indianapolis was filed with the Commission.

The procedural schedule in this Cause has been modified several times at the request of the parties. The remaining schedule is for the arbitration facilitator's report to be submitted to the IURC on January 20, 2005 with the IURC scheduled to issue an Order by February 16, 2005.

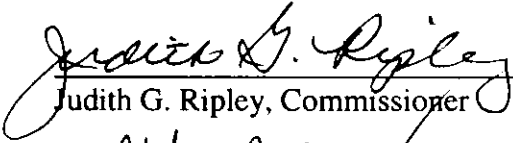
As the parties are aware, the Federal Communications Commission ("FCC") issued a press release on December 15, 2004 announcing its adoption of new UNE rules. The release of an actual order appears imminent. On January 4, 2005, the FCC filed with the DC Circuit Court a *Motion of Respondents to Dismiss Petition for Writ of Mandamus*, of which we take administrative notice. In that filing the FCC stated the new rules will supersede the FCC's interim UNE rules and when the new rules take effect, the interim rules will have no continuing force. The FCC further stated that it expects to release its order promulgating the new rules within approximately one month.

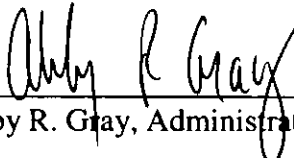
Given the FCC's recent statements about its activities regarding new UNE rules, we anticipate that the FCC UNE order will be issued between the time the arbitration facilitator's report is due to be submitted to the IURC and the time our order in this case is currently scheduled to be issued. The unfortunate timing of these events is significant and causes us serious concerns about the current schedule and relevance of the record in this case. Our current record is incomplete in that the evidence and proposed orders in this case were submitted prior to the FCC vote to adopt new UNE rules. Yet, the new FCC's UNE rules have yet to be made public. The FCC's new rules are an important consideration in this case and it is impossible to supplement and appropriately complete the record until after the FCC Order is issued.

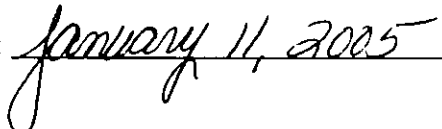
This Commission has an obligation to fulfill its Section 252 arbitration obligations to "ensure that such resolution and conditions meet the requirements of Section 251." Section 252 (c)(1), TA 96. Yet, the current case schedule prevents the Commission from considering the most recent and relevant indications from the FCC as to Section 251 requirements. While it is possible to base decisions in this case on the interim UNE rules, (which will expire anyway no later than March 13, 2005), it is also possible, even likely, that such decisions would be outdated before the Commission could even approve the associated contract language- the ultimate goal of this arbitration. Such an unenviable result would necessitate an immediate consideration of this new, but nonetheless anticipated enunciation of Section 251 rules by the FCC. This option seems to be senseless. Another option suggested by parties to deal with the looming UNE order by the FCC is to ignore the clear indications of its impending arrival and merely proceed pursuant to state statutory authority. Even if we were inclined to do so, the subsequent emergence of new FCC rules are not inconsequential to this approach, as Section 251 requires consistency of state actions with the federal rules. Therefore, this tack too seems to be impracticable. Important and equally troubling is the fact that the current schedule also prevents the parties from further negotiations due to the slight timing difference of the FCC UNE order and the current schedule for an order in this case.

Given this current situation and the status of the record herein, the parties are directed to submit viable options for the resolution of this arbitration. The responses to this docket entry should be filed by Friday, January 14, 2005.

**IT IS SO ORDERED.**

  
Judith G. Ripley, Commissioner

  
Abby R. Gray, Administrative Law Judge

Date:   
January 11, 2005